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Note should also be taken of the Supreme Court decision in *Continental Illinois National Bank & Trust Company v. Art Institute of Chicago*, a holding which permitted the introduction of parol evidence to explain an omission in the reference to incorporated trust documents.

VII. PUBLIC LAW

ADMINISTRATIVE LAW

Judicial construction of a statute conferring power upon an administrative tribunal can either limit or expand the extent of the discretion which an agency may exercise. The case of *People ex rel. Schoenebaum v. Department of Registration* is an example of the first of these propositions. In that case, the problem before the court was one concerning the extent of power in the Department to grant, or to withhold, a medical license for an individual who was already authorized to practice medicine in another country. The statute permitted the Department, in its discretion, to issue a license to one already licensed elsewhere upon evidence the applicant met certain conditions. The applicant in question had been educated and licensed in Germany. He subsequently emigrated to the United States and, in due course, became a naturalized citizen. On two occasions, he had applied for a license under the reciprocity provision but his application had been denied. He then submitted to written medical examinations on seven separate occasions. Each time, he failed to obtain a satisfactory passing grade. Having once more applied for permission to practice under the reciprocity provision, and having been again refused permission, he caused mandamus proceedings to be instituted.

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87 409 Ill. 481, 100 N. E. (2d) 625 (1951), affirming 341 Ill. App. 624, 94 N. E. (2d) 602 (1950). The case has been noted in 30 CHICAGO-KENT LAW REVIEW 96 and 180, and in 100 U. of Pa. L. Rev. 925.


2 Ill. Rev. Stat. 1951, Vol. 2, Ch. 91, § 4. The statute enumerates the precise conditions to be observed.

3 This fact does not appear in the court's statement of the case but is disclosed in the abstract of the record and the briefs filed in the case.
In its answer, the Department admitted that the applicant had met all of the conditions set out in the statute but justified its refusal upon a departmental rule of long standing which provided that one who failed a written examination could not thereafter take advantage of the privilege of reciprocity. The trial court ruled in favor of the applicant and the Appellate Court for the First District affirmed on the ground the regulation operated to impose additional conditions not provided for in the particular statute and was, therefore, an unreasonable one. The holding would be indisputably clear but for the fact the statute contains a phrase to the effect that the department "may in its discretion" issue a license without examination. The denial of the existence of a discretion in the matter was an obvious flying into the teeth of plain statutory language to the contrary. If the court felt that the discretion exercised was unreasonable, it did not have to curb statutory powers the way it did. It could merely have stated that the particular decision was improper, thereby justifying reversal. By taking an extreme position, the court has now unnecessarily limited the power granted by the legislature.

The necessity for a notice and hearing prior to administrative action may rest upon a constitutional or a statutory requirement. In *Hornstein v. Illinois Liquor Control Commission*, the Illinois Supreme Court was required to determine whether either statute or constitution made it necessary that a holder of a liquor license be accorded a hearing before initial revocation of his license occurred. The county commissioner there revoked the plaintiff’s liquor license at an *ex parte* hearing. On appeal to the state commission, the local commissioner’s decision was affirmed. The circuit court of the county, on review of the administrative action, reversed, but it, in turn, was reversed by the Supreme Court. The main contention turned on whether or not the initial revocation was void since it had not been preceded by a hearing. Plaintiff urged that the liquor control statute contained certain provi-


5 Ill. Rev. Stat. 1951, Vol. 1, Ch. 43, § 94, provides that an individual whose license has been revoked by a local commission may appeal to the Illinois Liquor Control Commission which is then to hear the case *de novo*.
sions indicating a legislative intent to require such a hearing. Even if it did not, the due process clause of the state constitution was said to make a hearing necessary before administrative action. There being no express statutory requirement for a hearing prior to initial revocation, an implied requirement was said to rest in the fact that the license could be revoked only "for cause," presupposing a hearing to establish the necessary "cause," and also in the fact the local commissioner was authorized to examine the licensee and to issue subpoenas.

The Supreme Court, however, was not impressed. Noting that whenever the legislature had intended to require a hearing the requirement had been explicitly stated, the court felt the silence was significant. It answered the constitutional argument that procedural due process required a prior notice and hearing by adopting the classical approach which treats a liquor license as a mere privilege, not a property right, therefore not protected by the due process clause.

Again, during the year, the court was confronted with problems arising under the provisions of the Illinois Administrative Review Act. Two of these cases involved the statutory requirement that, in any action to review any final decision of an administrative agency, "the administrative agency and all other persons, other than the plaintiff, who are parties of record to the proceedings before the administrative agency shall be made defendants." The first decision, that of Moline Tool Company v. Department of Revenue, settled a troublesome situation which

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6 Thus, where revocation proceedings are instituted by a private citizen, a hearing is expressly required: Ill. Rev. Stat. 1951, Vol. 1, Ch. 43, § 151. The same thing is true upon an appeal from a local commission decision to the state commission: ibid., § 153.

7 The case also decided that Ill. Rev. Stat. 1951, Vol. 1, Ch. 43, § 153, which states that a failure of a licensee to submit to examination would constitute an admission that he had violated the provisions of the Act and therefore provided ground for revocation, did not violate the plaintiff's right against self-incrimination. The court pointed out that plaintiff could remain silent if he so desired. The fact that the silence might result in a revocation of the liquor license was deemed to be of no consequence since the plaintiff did not have a constitutional right to a license in the first place.


9 410 Ill. 35, 101 N. E. (2d) 71 (1951).
had been created by unfortunate language contained in an earlier Supreme Court opinion. In that case, the plaintiff had filed a claim for a refund of certain retailers' occupational taxes which claim had been denied by the Department. In a suit brought by the taxpayer to review that decision, the Department of Revenue was designated as defendant. It thereupon contested jurisdiction on the ground the action was really a suit against the state and was prohibited by the state constitution. The trial court dismissed the complaint but, on direct appeal to the Supreme Court because a constitutional question was involved, the decision was reversed and the cause was remanded.

To achieve that result, the court was forced to repudiate certain language which had appeared in its opinion in the case of Krachock v. Department of Revenue. There, although not necessary to the actual decision, the court had said: "It may be noted at this point that the defendant is 'Department of Revenue.' The Department of Revenue is an arm of the state and may not be sued, because the Constitution of Illinois provides that the state shall never be made a defendant in any court of law or equity." Confusion resulted therefrom for, while the court denied the plaintiff's right to name the Department as a defendant, it did not supply an answer to the question as to who should be named. That confusion has now, fortunately, been abated with the instant conclusion that an action designed to obtain a judicial review of a decision by a governmental agency does not fall within the constitutional prohibition. As, in such a proceeding, there would be no attempt to impose liability upon the state or its agency in any form, there could be no encroachment upon sovereign immunity.

Another problem regarding the naming of defendants was

11 403 Ill. 148, 85 N. E. (2d) 682 (1949).
12 403 Ill. 148 at 153, 85 N. E. (2d) 682 at 685.
13 The court's conclusion would appear to be buttressed by the fact that, prior to the enactment of the Administrative Review Act, agency decisions were reviewable by means of common law or statutory certiorari and these writs were always addressed to the state agency and the court never objected to such a practice: Snite v. Department of Revenue, 398 Ill. 41, 74 N. E. (2d) 877 (1947).
involved in *Cuny v. Annunzio.* A claimant had filed for unemployment compensation and the deputy processing the claim had made a favorable award. The employer, having exhausted all administrative remedies, then filed a complaint under the Administrative Review Act naming the Director of Labor as the sole defendant. A motion to dismiss that proceeding, for failure to join the Board of Review and the claimant, was passed over in the trial court when it upheld the review board's decision on the merits. The Illinois Supreme Court refused to consider the merits of the appeal from that judgment but decided that the motion to dismiss should have been allowed. It reached that conclusion on the basis that an adverse ruling by the court on appeal would deprive the claimant of compensation and would, therefore, materially affect her interests. Being a necessary and indispensable party, as well as a party of record, she should have been named in the complaint.

Perhaps the most interesting and significant portion of the decision involves the court's conclusion that the Board of Review of the Department of Labor should have been named as defendant and not merely the Director of Labor. The plaintiff argued that the Board was not an independent administrative agency but was merely an arm of the Department of which Annunzio was the head. The court admitted this but pointed out that the Administrative Review Act contemplated that the board or individual who entered the administrative decision was the appropriate defendant and this whether the party named was the actual head of the department or not. Of course, if the Director of Labor had made the final decision, as he may do in certain proceedings, the conclusion would be inescapable that he would have been an

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14 411 Ill. 613, 104 N. E. (2d) 780 (1952).

15 The court failed to comment upon whether the Director of Labor was also a necessary party defendant, being content to state that the Board of Review should have been named. Absence of discussion on this particular point creates an additional problem. The section of the Unemployment Compensation Act authorizing the review of decisions thereunder by means of a proceeding pursuant to the Illinois Administrative Review Act stipulates that in such actions the Director of Labor shall be "deemed" a party: Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 520. Does this mean that the Director must be named as a party in the pleadings, or does he automatically become such under this provision without a specific joining?

16 See, for example, Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 225(b).
appropriate defendant. The holding, however, generates questions which are, as yet, unanswered. If the statute creates a specifically named board or administrator within an executive department to make determinations and decisions, that board or administrator would have to be named as a defendant. If, on the other hand, the statute fails to designate any particular officer to be the final arbiter, thereby making the determinations of the agency into anonymous departmental decisions, would the mere naming of the department as defendant be sufficient? The practitioner may well encounter difficulties in determining whom to name in his efforts to comply properly with the Administrative Review Act.

Even the most cursory reading of that statute should, however, make it obvious that it contemplates no more than a review of the record formulated during the administrative hearing, for the statute expressly states that the record is to be filed with the court and prohibits the introduction of new evidence. It is, therefore, surprising to find that an Illinois court would, upon an appeal from an administrative decision, allow a de novo hearing of the issues. This, however, is exactly what did occur in the case of Strohl v. Macon County Zoning Board of Appeals. The plaintiff had requested a rezoning of property but this was denied by the zoning board of appeals. A proceeding under the Administrative Review Act was then filed in the circuit court and the complaint, in conformity with the statute, requested that the record of the proceedings before the board be filed. From then on, however, the specific requirements of the statute were totally ignored. No record, if there was any, was filed and the trial court, apparently with the acquiescence of everyone involved, held a de novo hearing. Since constitutional issues were involved, an appeal was taken directly to the Illinois Supreme Court. One should have little difficulty imagining the surprise of the justices of that

17 Much of the power delegated to the Department of Revenue, for instance, is delegated without the placing of responsibility for its exercise in any particular officer or commission within the department.
19 411 Ill. 559, 104 N. E. (2d) 612 (1952).
court on being asked to review a record, first made in the trial court, in a proceeding of that character. As this procedure so clearly violated the specific provisions of the statute, the Supreme Court promptly disposed of the case by remanding it with a direction to determine whether an administrative record existed. If one did exist, the trial court was to review it. If one did not, the decision of the zoning board of appeals was to be reversed for failure to make a record.

**CONFLICT OF LAWS**

One case in the field of conflict of laws is noteworthy, not so much for its novelty as for its function in calling attention to the fact that the Uniform Judicial Notice of Foreign Law Act has been embodied in the Illinois Evidence Act. In the case of *Commercial Credit Corporation v. Fatz* the Appellate Court for the First District held that a conditional sale contract validly executed and recorded in the state of Kentucky, pursuant to the Uniform Sales Act of that jurisdiction, had to be enforced, as against a local bona fide purchaser without notice following a removal of the property into this state without the consent of the conditional vendor. Although the defendant had argued that the law of Kentucky had not been properly presented, the court held the objection to be without merit because, under the Illinois statute, the local court was required to take judicial notice of the Kentucky Sales Act.

**CONSTITUTIONAL LAW**

Eighteen cases involving attacks on Illinois statutes for varied constitutional reasons were considered during this survey period but in only three instances were the attacks successful. The grounds asserted ranged from claimed violations of guarantees in favor of religious freedom to the setting up of arbitrary and capricious schemes of classification.

The general police power was relied upon, by the Supreme

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Court, to sustain certain credit restrictions imposed on liquor dealers\textsuperscript{22} which had been challenged in the case of \textit{Weisberg v. Taylor}.\textsuperscript{23} It also, in \textit{Downey v. Grimshaw},\textsuperscript{24} reached the conclusion that no unconstitutional delegation of legislative power had been made by the variation section of the \textit{Zoning Act}.\textsuperscript{25} The court there noted that the rule of \textit{Welty v. Hamilton}\textsuperscript{26} could not be applied because, at the time of that case, the statute contained no provision for the granting of a variation by corporate authorities.

Questions concerning separation of powers, advanced under Article III of the state constitution, were presented in two cases. In the first, that of \textit{Board of Education v. Nickell},\textsuperscript{27} the criticism was directed against some sections of the \textit{School Code}\textsuperscript{28} which transferred authority over district changes from the county superintendent to the county judge, but the court found no violation to exist. In the second, that of \textit{Agran v. Checker Taxi Company},\textsuperscript{29} however, the legislative addition of certain notice requirements to the \textit{Civil Practice Act}\textsuperscript{30} in relation to the dismissal of civil proceedings for failure to prosecute were said to infringe upon the inherent power of the judiciary.

Use of the public credit for the benefit of private individuals, prohibited since an early day in the history of this state,\textsuperscript{31} formed the basis of the challenge directed against other sections of the \textit{School Code}\textsuperscript{32} intended to restore pension payments previously taken away from retired public school teachers. In \textit{Krebs v. Board of Trustees of Teachers’ Retirement System},\textsuperscript{33} the attack

\begin{footnotesize}
\begin{thebibliography}{99}
\bibitem{22} III. Rev. Stat. 1951, Vol. 1, Ch. 43, § 122.
\bibitem{23} 409 Ill. 384, 100 N. E. (2d) 748 (1951), noted in 1 DePaul L. Rev. 287.
\bibitem{24} 410 Ill. 21, 101 N. E. (2d) 275 (1951).
\bibitem{25} Ill. Rev. Stat. 1951, Vol. 1, Ch. 24, § 73.4.
\bibitem{26} 344 Ill. 82, 76 N. E. 333 (1931).
\bibitem{27} 410 Ill. 98, 101 N. E. (2d) 438 (1951).
\bibitem{29} 412 Ill. 145, 105 N. E. (2d) 713 (1952), noted in 30 CHICAGO-KENT LAW REVIEW 383.
\bibitem{30} III. Rev. Stat. 1951, Vol. 2, Ch. 110, § 172(5) and § 174(a).
\bibitem{31} Ill. Const. 1870, Art. IV, § 20, is a reiteration of a prohibition first adopted in Ill. Const. 1848, Art. III, § 38.
\bibitem{33} 410 Ill. 435, 102 N. E. (2d) 321 (1951).
\end{thebibliography}
\end{footnotesize}
in question failed when the Supreme Court, upholding the statute, said the restoration of benefits was founded upon a moral obligation, hence involved no more than an expenditure of public funds for a public purpose.\textsuperscript{34}

Claims of interference with religious freedoms\textsuperscript{35} were advanced in two instances. A self-denominated faith healer, who had been convicted of violating the Medical Practice Act,\textsuperscript{36} failed to substantiate his claims, in \textit{People v. Handzik},\textsuperscript{37} when the court affirmed the conviction saying that bona fide faith healers were specifically exempted from the operation of the statute.\textsuperscript{38} In the other case, that of \textit{People ex rel. Wallace v. Labrenz},\textsuperscript{39} a parent sought to prevent the administration of a vitally needed blood transfusion to his child, also on religious grounds, but failed because the interest of the state, as \textit{parens patriae}, was said to override even the guarantee of religious freedom. Although the question had become moot prior to argument, the court noted that the issue was of such substantial interest as to warrant an exception to the general rule against writing opinions in moot cases.

Several cases dealt with aspects of due process of law, thereby providing occasion for re-examination of fundamental federal and state constitutional provisions.\textsuperscript{40} In three of these instances, the question was generated in the course of a criminal prosecution but proved to be successful in only one. Thus, in \textit{People v. Garman},\textsuperscript{41} the defendant claimed that the so-called "reckless homicide" statute\textsuperscript{42} was defective in that it failed to define the crime sufficiently to be identifiable by an average citizen, but the Supreme Court thought otherwise. Much the same argument was offered in \textit{People v. Beauharnais}\textsuperscript{43} by way of challenge to the provisions

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\item \textsuperscript{34} See Hagler v. Small, 307 Ill. 460, 138 N. E. 849 (1923).
\item \textsuperscript{35} U. S. Const., Amend. 1; Ill. Const. 1870, Art. II, § 3.
\item \textsuperscript{36} Ill. Rev. Stat. 1951, Vol. 2, Ch. 91, § 16i.
\item \textsuperscript{37} 410 Ill. 295, 102 N. E. (2d) 340 (1951).
\item \textsuperscript{38} Ill. Rev. Stat. 1951, Vol. 2, Ch. 91, § 16v.
\item \textsuperscript{39} 411 Ill. 618, 104 N. E. (2d) 769 (1952), noted in 40 Ill. B. J. 575. Certiorari has been denied.
\item \textsuperscript{40} U. S. Const., Amend. 14; Ill. Const. 1870, Art. II, § 2.
\item \textsuperscript{41} 411 Ill. 279, 103 N. E. (2d) 636 (1952).
\item \textsuperscript{42} Ill. Rev. Stat. 1951, Vol. 1, Ch. 38, § 364a.
\item \textsuperscript{43} 408 Ill. 512, 97 N. E. (2d) 343 (1951).
\end{itemize}
of the Criminal Code regarding criminal libel. Following state court affirmance of the conviction therein, the United States Supreme Court, on certiorari, while divided five to four, reached much the same conclusion although the majority expressed some doubts as to the wisdom underlying the statute. A section of the Illinois version of the Uniform Trust Receipts Act was, however, held to be unconstitutional in People v. Levin. Due process requirements were there deemed violated because of an inadequate reference to the penalty clause in the title to the statute.

Due process elements were also involved in civil cases. Mention has been made elsewhere of the holding of the case of Grasse v. Dealers' Transport Company which declared certain parts of the Illinois Workmen's Compensation Act to be unconstitutional. Attention should also be given to the notice and hearing problem raised in Hornstein v. Illinois Liquor Control Commission. The court there held that no constitutional violation had occurred in the conduct of a summary liquor license revocation proceeding, even though the same had been conducted without notice.

Most of the criticism advanced during the year, however, turned on matters of classification. In Chatkin v. University of Illinois, for example, the claim was propounded that certain distinctions made, license-wise, under the 1943 Public Accountants Act were invalid. That statute drew a distinction between those accountants who, prior to its adoption, had obtained their licenses by examination and those who had been granted a license

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45 See 343 U. S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952). Justices Black, Reed, Douglas and Jackson each wrote a dissenting opinion.
47 412 Ill. 11, 104 N. E. (2d) 814 (1952), noted in 30 Chicago-Kent Law Review 387.
51 412 Ill. 365, 106 N. E. (2d) 354 (1952). The case is more fully discussed above, under the topic of Administrative Law, notes 4 to 7.
52 411 Ill. 105, 103 N. E. (2d) 498 (1952).
merely by reason of having a specified number of years of experience as such. The classification scheme was charged with being an arbitrary one, thereby making the examination provisions unlawful. The attack failed, for the Supreme Court found a reasonable basis for the distinction but, even if one had not been present, the matter had been rendered moot by a recent amendment to the statute.\textsuperscript{54}

In another classification case, that of \textit{Gaca v. City of Chicago},\textsuperscript{55} the attack was directed against a section of the revised Cities and Villages Act,\textsuperscript{56} one which provides for indemnity in favor of certain police officers who may have inflicted injury on person or property while engaged in the performance of their duties. A majority of the Supreme Court found the classification to be based on a substantial difference, but the dissenting judges stated they could see no greater chance for the causing of negligent injury in a large city than in a smaller one. The dissent would appear to have reached a conclusion more nearly in accord with established rules for statutory construction.

Two school cases might also be mentioned. The plaintiff in \textit{People v. Loitz},\textsuperscript{57} questioning the legal existence of a certain school district, contended that the School Survey Act,\textsuperscript{58} under which the school district had been created, was invalid because of an arbitrary division between communities having less than, and more than, five hundred inhabitants, as well as for an alleged improper delegation of legislative power. The statute was sustained, first because the court could see a proper recognition of differences between rural and urban areas, and second, because the survey committee possessed advisory powers only with the ultimate decision being left in the hands of the voters. The attack in \textit{Schofield v. Board of Education}\textsuperscript{59} more nearly concerned

\textsuperscript{54}See Ill. Rev. Stat. 1951, Vol. 2, Ch. 110 1/2, § 28(2)(b) and § 28(2)(c).
\textsuperscript{55}411 Ill. 146, 103 N. E. (2d) 617 (1952), noted in 1 DePaul L. Rev. 306.
\textsuperscript{56}Schaeffer and Hershey, JJ., jointly dissented in one opinion.
\textsuperscript{57}412 Ill. 313, 106 N. E. (2d) 338 (1952).
\textsuperscript{58}Ill. Rev. Stat. 1951, Vol. 2, Ch. 122, § 713 et seq.
\textsuperscript{59}411 Ill. 11, 103 N. E. (2d) 640 (1952).
voting rights in connection with the establishment of a school district. It was there claimed that a portion of the School Code was invalid for failure to enumerate the qualifications required of voters. The court indicated the sections in question were not intended to set up different qualifications for voters at school elections but were added merely for the purpose of bringing all statutory provisions regarding school elections into one convenient place.

Other minor points are worth brief notice. An attempt to enjoin the enforcement of the Illinois Optometric Practice Act, predicated on the theory the various sections thereof bore no definite relation to the end sought to be subserved, was defeated in *Klein v. Department of Registration and Education.* The Hospital District Law was sustained in *People ex rel. Royal v. Cain* although it was there contended that the statute contravened the state constitution in a host of ways. For that matter, the attack on the 1951 amendments to the Motor Vehicle Act, which had provided for a considerable increase in the cost of licensing trucks, experienced no better fate.

**MUNICIPAL CORPORATIONS**

While certain aspects of the case of *Michigan Boulevard Building Company v. Chicago Park District* have been covered elsewhere in this survey, some repetition would be proper for the case also deals with a matter of vital concern to municipal authorities. The expanded flow of automobile traffic and the need

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61 Ibid., Vol. 2, Ch. 91, § 105.1 et seq.
62 412 Ill. 75, 105 N. E. (2d) 758 (1952).
64 410 Ill. 39, 101 N. E. (2d) 74 (1951).
66 See Co-ordinated Transport, Inc. v. Barrett, 412 Ill. 321, 106 N. E. (2d) 510 (1952), and Bode v. Barrett, 412 Ill. 204, 106 N. E. (2d) 521 (1952). The last mentioned case involved an interesting element in that the taxpayer who had sued to enjoin the department from disbursing public funds was not personally or directly affected by the statutory provisions in question. On that point, see Krebs v. Thompson, 387 Ill. 471, 56 N. E. (2d) 761 (1944).
68 See Division VI, Property, notes 6 to 11.
for providing parking space, led the Chicago Park District to seek an enabling act from the state legislature authorizing the construction of a downtown underground garage. Following the enactment of such a statute, attack was made thereon, not only as to whether it purported to authorize a proper corporate purpose but also because it was said to involve special legislation and a pledging of public revenue to finance the necessary construction. All issues were decided favorably to the Park District and a decree dismissing the complaint was affirmed, the upper court noting that the term "park purposes" was not a static concept but would respond to current and changing uses. The decision should prove helpful to other congested areas of the state.

In much the same way, the case of Gaca v. City of Chicago, while primarily devoted to matters of constitutional law, is worthy of notice here. The suit was one by a police officer to recover an amount he had been forced to pay on a judgment rendered against him in favor of certain persons whom he had falsely arrested. The action was based on a provision to be found in the Cities and Villages Act, one with a checkered history, peculiarly applicable only to the City of Chicago. The municipality, by way of defense, questioned the constitutionality of the section in question on the ground that it was special legislation. Its failure to succeed on that point very naturally led to affirmance of a judgment for the police officer, for the case came squarely within the statute. The holding may, however, foreshadow other even more interesting developments as the right to indemnity is supposedly limited to cases wherein the injury has arisen by non-wilful misconduct on the part of the police officer. It has been suggested before, and it may be worth repeating again, that, if protection is to be provided for persons injured by acts of police officers, the most direct remedy would be to abolish the doctrine of governmental immunity.

70 411 Ill. 146, 103 N. E. (2d) 617 (1952).
TAXATION

The decision of the Supreme Court in the tax case of People ex rel. Marsters v. Missionaries is less surprising in result than interesting as an example of judicial application of a statutory provision the intendment of which is abundantly clear, but the structure and wording of which is fraught with difficulty. The court was there called upon to determine whether or not certain real property owned by a religious corporation, and used for various educational, religious and residential purposes, was exempt from real property taxes under the provisions of Section 19 of the Illinois Revenue Act. The premises were intended to be used, and in fact were used during approximately nine months of the year, primarily as a seminary where a course of instruction was given approximately equal to high school and three years of an undergraduate college. In addition to the general educational curriculum, several hours of each day were devoted to the moral training of the students. The instruction and administration was furnished primarily by priests and nuns who received no compensation for their work but were furnished lodging and food on the premises. A portion of the premises was used for the housing of visiting lecturers and instructors, as well as for lay visitors and guests. During the summer months, when the seminary was not in session, the entire premises were apparently used for "retreats" or religious assemblies. The retreatants were neither required nor requested to make payment for such use, although they did frequently make voluntary contributions to the seminary, which contributions were used solely for its support.

Out of the rather long and cumbersome provisions of the applicable statutory section, only two subsections were pertinent; one exempting "all property used exclusively for religious purposes, or used exclusively for school and religious purposes . . . and not leased or otherwise used with a view to profit," and an-

73 409 Ill. 370, 99 N. E. (2d) 186 (1951), noted in 40 Ill. B. J. 132.
74 See School of Domestic Arts and Science v. Carr, 322 Ill. 562, 153 N. E. 669 (1926).
other exempting "all property of institutions of public charity, all property of beneficent and charitable organizations . . . when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit." With reference to the housing of the instructors and administrators, the court was confronted at the outset with its prior holdings to the effect that a parsonage\(^7\) and a residence occupied rent-free by a teacher in a parochial school\(^7\) were used primarily for housing purposes so not exempt by reason of their relationship to religious institutions. The court, however, surmounted this difficulty by pointing out that the housing accommodations in the instant case were not merely incidental to the conduct of the exempt activity, but constituted rather "the direct application of the" property "to the accomplishment of the primary purpose for which the seminary exists." It also held that the term "exclusively," as used in the quoted subsections, should be construed as if it read "primarily."

This left the matter of the summer use of the premises for retreat purposes to be surmounted. The court might well have held, consistent with its holding that "exclusively" means "primarily," that an exemption would exist upon the ground the premises were used "for school and religious purposes" with the summer use for retreats and the like being a mere incident thereto. Instead, it predicated the exemption upon the sweeping provisions of subsection 7 of Section 19, treating the property to be that of a beneficent and charitable organization "actually and exclusively used for such charitable or beneficent purposes." It may be that the court realized the implications which might have arisen had it predicated the exemption on the other subsection. To have held that the premises would be exempt because used nine months in the year for the religious, or for school and religious purposes, would have left the matter of use during the remaining three months open to wholly unrelated purposes. It

\(^7\) First Congregational Church v. Board of Review, 254 Ill. 220, 98 N. E. 275 (1912).

\(^7\) St. John Congregation v. Board of Appeals, 357 Ill. 69, 191 N. E. 282 (1935).
may, therefore, have envisioned the presentation of a future case in which the unrelated and non-exempt uses might have constituted an even larger portion of the total use.

In the foregoing case, the question of exemption was raised in the customary manner by filing objections in the county court. A reverse situation is presented in the case of Goodyear Rubber Company v. Tierney\(^7\) where the plaintiff sought to assert an exemption by means of a declaratory judgment proceeding but was held to be precluded from such remedy because a more customary statutory remedy was available.\(^7\) The plaintiff, lessee of property owned by the federal government, had urged that the assessment was against the fee interest, whereas the defendant had contended that the assessment was made against the leasehold interest of the plaintiff, as permitted under Section 26 of the Revenue Act.\(^8\) The court, holding that a suit for declaratory judgment could not be maintained, distinguished the cases involving the use of an injunction, offered by the plaintiff by way of analogy, as being applicable only where the property was totally exempt or where the tax had already been assessed and constructive fraud was present. This resolution of a question heretofore unanswered in Illinois was made in accordance with the general weight of authority throughout the country.\(^8\)

**VIII. TORTS**

Save for those torts cases which have been more appropriately discussed in connection with other sections of this survey,\(^7\) no cases of transcendental importance arose during the year in that

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78 411 Ill. 421, 104 N. E. (2d) 222 (1952), noted in 40 Ill. B. J. 535.
79 Ill. Rev. Stat. 1951, Vol. 2, Ch. 120, § 675, provides for the payment of taxes under protest and for objection in the county court.
80 Ill. Rev. Stat. 1951, Vol. 2, Ch. 120, § 507, provides: “When real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate.”
81 See, for example, Kariher's Petition, 284 Pa. 455, 131 A. 265 (1925). See also Borchard, Declaratory Judgments, 2d Ed., pp. 320 and 342.
1 See Division I for tort cases growing out of the master-servant relationship; Division V for those connected with the family; and Division VI regarding wrongs arising from property.